



Fast Track Proposed Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-40-280 and 12 VAC 30-40-345
Regulation title	More Liberal Income Disregards (40-280) and Eligibility under §1931 of the Act (40-345)
Action title	Medicaid Eligibility Income Disregards
Date this document prepared	August xx, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The Department of Medical Assistance Services (DMAS) is proposing to amend regulations regarding the income disregards utilized in the Medicaid income eligibility determination. Income which is disregarded is not counted in determining an individual's eligibility for the Medicaid Program. Currently, individuals eligible for coverage under the Medicaid program are allowed disregards for certain types of income in the determination of their eligibility. The proposed change will add a disregard for income earned from temporary employment with the United States Census Bureau in completing a Decennial Census.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary with the attached amended Virginia Administrative Code pages for Medicaid Eligibility Income Disregards (12 VAC 30-40-280 and 12 VAC 30-40-345) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act. I hereby certify that these final, adopted regulations are full, true, and correctly dated.

Date

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulatory change is to amend current Medicaid regulations to provide for the disregard of income obtained through temporary employment with the United States Census

Bureau for the Decennial Census. This proposed amendment to the current regulations contributes to preserving the health, safety, and welfare of the citizens of the Commonwealth by maintaining Medicaid coverage for recipients during this temporary period of employment and allowing for the disregard of this temporary source of income.

The loss of Medicaid coverage is potentially more costly to the Commonwealth than allowing the individual to maintain his current health status by continuing his Medicaid coverage during this period of temporary employment. Maintaining coverage should be cost-effective. A loss of coverage could result in the utilization of emergent care because the individual would otherwise be uninsured. The use of emergent care by an uninsured individual places a burden on the healthcare system and serves to increase costs for the general population. The denial of Medicaid coverage for individuals, who would otherwise be eligible if not for this income, is also potentially more costly. Additionally, reapplication to the Medicaid Program at a point in time where lack of healthcare may have caused an individual's health status to deteriorate, would bring the individual back into the program with increased costs. Therefore, DMAS believes that it is in the best interests of the Commonwealth and its citizens to permit this regulatory change and allow for the disregard of this income source from the Medicaid income eligibility determination.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast track process is being utilized to promulgate this change in regulatory language as it is expected to be a non-controversial amendment to existing regulations. The result of this additional income disregard would allow vulnerable recipients to maintain their health care coverage; and therefore, a stable health status. The disregard would also allow individuals of limited financial means to temporarily increase their disposable income to provide for non-medical needs. Additionally, the continuation of healthcare may result in an overall cost savings to the Commonwealth. The United States Census Bureau has advised that it will begin hiring temporary workers in preparation for the upcoming Decennial Census in 2009, meaning that the timeframe to complete this change is very limited.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The sections of the Virginia Administrative Code that are affected by this action are 12 VAC 30-40-280, More Liberal Income Disregards and 12 VAC 30-40-345, Eligibility under §1931 of the Act.

Current Medicaid regulations provide for the disregard of certain types of income. Under 12 VAC 30-40-345, Eligibility under §1931 of the Act, Low-income Families and Children (LIFC) are covered by the Commonwealth. In determining eligibility for Medicaid, the agency uses the Aids to Families with Dependent Children (AFDC) policy in effect as of July 16, 1996, with some modifications. With regard to income, this regulation allows for the use of less restrictive methodologies than those in effect as of July 16, 1996. Earned income is disregarded for any child under the age of 19 years old who is a student, as well as, the fair market value of all in-kind support and maintenance as income in determining financial eligibility for these groups. Under 12 VAC 30-40-280, More Liberal Income Disregards, the value of in-kind support and maintenance as income is disregarded when determining financial eligibility for Medicaid. This applies to Aged, Blind and Disabled (ABD) individuals, with the exception of the special income level group of institutionalized individuals, and all categorically needy and medically needy individuals under the family and children covered groups.

The recommended amendment of these regulations permits the addition of income derived from temporary census bureau employment to be disregarded or not counted as a source of income. The bureau concentrates employment efforts in the geographic locations where enumeration activities are being conducted. It places emphasis on hiring individuals from within low-income neighborhoods as they are hard to serve areas. This source of income is not only temporary, but offers no opportunity for permanent employment, is time limited and intermittent, with no benefits. An individual eligible for full coverage under the Medicaid Program must have an income of less than 80% of the Federal Poverty Level or \$694.00 per month in the ABD covered groups. An adult eligible for full coverage in the LIFC covered groups must have countable income equal to or less than 90% Families and Children Income Limit for the locality in which the individual resides. [Example-A low income adult with a dependent child in a Group One locality must have countable income equal to or less than \$253.51 per month.] All of these individuals have incomes well below the Federal Poverty Level. The amount of compensation for this type of work is not likely to cause these affected persons' incomes to exceed the Federal Poverty Level. Therefore, the termination of Medicaid coverage for these individuals because of income earned from a temporary census job, under these circumstances would not be in the best interest of the individual or the Commonwealth.

Temporary positions with the Census Bureau are available only every ten years. These positions last for short periods (2-3 months), work schedules are intermittent, no benefits are offered and no opportunity for permanent employment is available. Medicaid eligible individuals who may obtain these positions are low income adults with dependent children and Aged, Blind and

Disabled (ABD) populations. The census bureau targets individuals for employment within the geographic locations in which it is conducting enumeration activities, especially in hard to serve low-income neighborhoods. This increases the likelihood that a Medicaid eligible individual may be employed by the Census Bureau. DMAS anticipates that this increase in income could cause ineligibility for Medicaid coverage for individuals, as they are within the income demographic targeted by the Census Bureau's hiring practices. These individuals are some of the most vulnerable of the general population and would otherwise be eligible for Medicaid if not for this temporary, intermittent source of income

Individuals eligible under the Medicaid Program as noted are low-income individuals who may have had little or no access to health coverage up until the time they were determined eligible for Medicaid coverage. As such, some may come into the program with pre-existing illnesses, which could be chronic conditions. Loss or denial of Medicaid coverage because of this temporary income could cause these medical conditions to go untreated. The individual's primary source of treatment if Medicaid was unavailable would be emergent care. This is detrimental to both the individual in terms of health and to the overall healthcare system in terms of cost. Additionally, individuals placed in this position would more than likely gain Medicaid coverage for payment of these costs at a point in time when the cost may be greater to the program. This leads to the conclusion that there is potential for an overall increase in the cost to the Medicaid Program for these individuals over what would have been spent had Medicaid coverage been available.

Implementation of the requested addition of this disregard would have little impact on the local administration of the program by social services. Individuals would maintain their Medicaid coverage and yet have some additional funds to provide for non-medical needs not covered by the Medicaid Program. Therefore, this change would be relatively transparent to both the recipient and the social services system.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

There are no disadvantages to the public or the Commonwealth in this regulation. The advantage is to low-income citizens by allowing for the disregard of a temporary, intermittent source of income which would cause a barrier to services to which they are otherwise eligible and should be able to access.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements in this proposal that are more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities are particularly affected by this change as implementation is statewide.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There is no adverse impact on small business. The amendments to the language for persons eligible for Title XIX services enhance the ability of citizens to participate in the Medicaid Program and to provide for their own needs.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

There is no budgetary or fiscal impact to the Medicaid Program by maintaining otherwise eligible individuals' Medicaid coverage.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

DMAS determined after reviewing Medicaid Program regulations, that there were no alternatives that would provide for the disregard of income from this specific source yet, preserve the intent of the regulations governing the counting of income in the Medicaid income eligibility determination process.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment, but may temporarily increase disposable family income for low income families by allowing them to provide for needs not covered under the Medicaid Program and by maintaining coverage for medical treatment.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Regulatory cite	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-40-280	N/A	This regulation does not currently	Amends the existing regulation to disregard income derived from

		provide for the disregard of this specific type of income.	temporary employment by the census bureau for Decennial Census.
12VAC 30-40-345	N/A	This regulation does not currently provide for the disregard of this specific type of income.	Amends the existing regulation to disregard income derived from temporary employment by the census bureau for Decennial Census.

The objective of the amendment of these regulations in disregarding income derived from temporary employment for a Decennial Census is consistent with the intent of current regulations. Current regulations disregard types of income whose affect on Medicaid coverage for low-income individuals would threaten their ability to maintain themselves in the community, as they are from unsustainable sources.